IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8862 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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HARESHKUMAR GIRDHARLAL MISTRY - Petitioner(s)
Versus
THE FACTORY MANAGER,
M/S. G.L. REXROTH INDUSTRIES LTD. - Respondent(s)

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Appearance :
Shri D. J. Bhatt for Petitioner(s).
Shri K. K. Nanavati for M/s. Nanavati Associates for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/07/2007

ORAL JUDGMENT

The petitioner-workman, being aggrieved by the award dated 2nd January, 1995 passed by the learned Labour Court,

Ahmedabad in Reference (LCA) No.1081 of 1983 rejecting the reference made by the workman, is before this Court with a submission that the learned Labour Court was unjustified in rejecting the reference.

2. The short facts necessary for disposal of the present matter are that the petitioner-workman was issued a letter dated 4th February, 1983 that the petitioner was removed from his services and he was offered one month's salary in lieu of the notice. In the reference, the petitioner submitted that no salary was offered to him and as the retrenchment was contrary to Section 25-F of the Industrial Disputes Act, 1947 and no reasons were assigned in the letter dated 4th February, 1983, the petitioner was entitled to be reinstated with full back-wages and consequential benefits.

2.1 The respondent-Establishment appeared before the learned Labour Court and submitted that along with the letter dated 4th February, 1983, one month's salary in lieu of notice was offered to the workman, but, the workman refused to accept the same. They also submitted that on an earlier occasion, a charge-sheet was issued to the petitioner, but, because of intervention of the union and certain assurances given by the workman and the union, the charge-sheet was withdrawn. According to them, the assurances were hollow and were not observed by the workman, the workman continued to misbehave with

the officers of the Establishment and was not ready and willing to give the desired production. They submitted that left with no choice, they were required to terminate the petitioner from the service.

2.2 After recording the evidence of the parties, the learned Labour Court, instead of entering into the question of termination on the ground of misconduct, etc., came to the conclusion that the letter dated 4th February, 1983 was served upon the petitioner and one month's salary in lieu of the notice was offered to the petitioner.

3. Shri D. J. Bhatt, learned Counsel for the petitioner, submitted that subsequent to the order passed by the learned Labour Court, the respondents have sent a letter to the petitioner clearly stating that they were offering the salary in lieu of the notice. He submitted that the order passed by the learned Labour Court deserves to be quashed firstly on the ground that salary in lieu of the notice was not offered, secondly on the ground that the learned Labour Court below did not look into the question of illegal termination, and thirdly that the order of termination if was to be taken to be retrenchment order, then, it did not assign any reasons.

4. Shri K. K. Nanavati, learned Counsel for the respondents, on the other hand, submitted that the case of the respondent-Establishment right from the beginning was that in view of the misconduct committed

by the workman, they were obliged to terminate his services.

5. After hearing the learned Counsel for the parties and on going through the records, I am of the opinion that the learned Court below erred in not properly appreciating the true nature of the dispute. The learned Court had craved its indulgence to the only fact that removal of the present petitioner-workman whether was legal retrenchment or illegal retrenchment. It was the case of the petitioner that he was illegally retrenched, but, the Establishment never said that it was the case of retrenchment, but, they were saying that by way of punishment, the services of the petitioner were terminated. In such case, the learned Labour Court was required to consider that whether without any inquiry or without affording any opportunity to the petitioner, could the services be terminated and if the inquiry was not made, whether the evidence brought before the learned Labour Court was justified to record a finding that the respondent-Establishment was justified in terminating the services for the reasons given by them either in the pleadings or in the proof.

6. The award made by the learned Labour Court deserves to and is accordingly quashed. The matter is remanded back to the learned Labour Court for deciding the matter afresh. The parties present in the Court shall appear before the learned Labour Court on 29th August, 2007.

It shall be the duty of the petitioner to file a copy of this order before the learned Labour Court to inform the said court that what it is required to do. It is made clear that the learned Labour Court shall provide an opportunity of hearing to the parties and shall decide the matter afresh in accordance with law, preferably within a period of three months from the date of appearance of the parties. Rule is made absolute. No costs.

[R.S.Garg, J.]

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